

**REMARKS**

**Preliminary Matters**

Claims 1-14 are all the claims pending in the application. Applicant is amending claim 10 and adding new claims 15 and 16. Claims 4-7, 9, and 14 are withdrawn as being drawn to a non-elected invention.

Applicant thanks the Examiner for acknowledging that certified copies of the priority documents have been received. Applicant also thanks the Examiner for considering the references cited in the Information Disclosure Statement filed on April 10, 2006.

**Claim Rejections under 35 U.S.C. § 112**

The Examiner rejected claim 10 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. Specifically, the Examiner rejected claim 10 because it recites “the peripheral surface (121)” without an antecedent basis. Applicant is amending claim 10 to address the Examiner’s rejection.

**Claim Rejections under 35 U.S.C. § 103**

The Examiner rejected claims 1-3, 8 and 11-13 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Montaner et al. (U.S. Pat. No. 5,025,958).

In rejecting claims 1-3, 8 and 11-13, the grounds of rejection state:

[Regarding claim 1,] Montaner et al. discloses a fluid dispenser head associating with a fluid dispenser member, the head comprising a body 8 defining a fluid outlet channel, a nozzle defining a dispenser orifice, a cover 4 assembled on the body to mask the body at least in part, and a skirt as recited in claim 8 (See Fig. 1 enclosed herein). Regarding the cover being overmolded on the body, whether a product is patentable depends on whether the process by which it is made is patentable. Regarding claim 3, overmolding the cover onto the nozzle would have been a matter of design choice since the device would still function properly with such an arrangement. Regarding claims 12 and 13, Montaner et

al. disclose the structural limitations of the instant invention and the method of overmolding has already been discussed above.

Office action at page 2. Applicant respectfully disagrees.

Regarding claim 1, Montaner does not disclose, nor render obvious, at least “the head being characterized in that the cover (3) is overmolded on the body (1).” The Examiner asserts that, with regard to the recited overmolding, “whether a product is patentable depends on whether it is known in the art or it is obvious, and is not governed by whether the process by which it is made is patentable.” (Office Action at page 2.) Process steps, however, can imply structure to a product. (See MPEP § 2113, last paragraph.) Structure is especially implied “where the manufacturing process steps would be expected to impart distinctive structural characteristics to the final product.” (See MPEP § 2113 (citing *In re Garnero*, 412 F.2d 276, 279, 162 USPQ 221, 223 (CCPA 1979) (holding “interbonded by interfusion” to limit structure of the claimed composite and noting that terms such as “welded,” “intermixed,” “ground in place,” “press fitted,” and “etched” are capable of construction as structural limitations.)))

Applicants respectfully submit that the recitation of “overmolded” implies distinctive structural characteristics onto the claimed product. For example, as was noted in the specification of the current application, “the cover is overmolded on the body 1, and also advantageously on the nozzle 2. This signifies that the cover 3 is molded directly onto the body and/or the nozzle 2. This technique makes it possible to obtain intimate contact between the surfaces of the cover and of the body and/or the nozzle.” (See current application, U.S. Pub. No. 2007/0119872 at ¶ 0031.) Therefore, the term “overmolded” imparts structure onto the claimed product.

In view of the specification of the current application, the term “overmolded” means that the cover is molded directly onto the body. By contrast, Montaner depicts a cap 4, a diffuser 6, and a means 8 for coupling the rest of the assembly to the pump, where there is a distinct gap between the cap 4 and the means 8. (*See* Montaner, col. 2, lines 50-56; *see also* attached Figure 1 of Montaner in Appendix A of this response.) As a result of the gap, the cap 4 appears to be first formed and then attached to the means 8. One skilled in the art would know that it would not be possible to overmold the cap 4 onto the means 8 resulting in the gap formed between the cap 4 and the means 8. As such, Montaner does not disclose all of the recited structural features of claim 1.

Moreover, the Examiner has not articulated any reason as to why it would have been obvious to modify Montaner to produce a cap 4 overmolded on the means 8. As such, the Examiner has not established a *prima facie* case of obviousness. Additionally, Montaner does not indicate that there was any need to modify the cap. In fact, Montaner discloses that “[t]he pump comprises diffusion and operating means 2 [which includes the cap] which are not described in detail because they are conventional and such description is not required for an understanding of the invention.” (Montaner, col. 2, lines 50-53.) Therefore, in view of the disclosure in Montaner, a person having ordinary skill in the art would not have looked to modify the cap in Montaner. In view of the above, Applicant respectfully submits that claim 1 is allowable over Montaner.

Regarding claim 3, the Examiner alleges that “overmolding the cover onto the nozzle would have been a matter of design choice since the device would still function properly with such an arrangement.” The Examiner has not established a *prima facie* case of obviousness. The proper test of obviousness is not whether “[the prior art device] would still function properly

with such an arrangement [of the new invention].” Rather, the proper test for obviousness is whether the claimed invention as a whole would have been obvious at the time of invention to a person having ordinary skill in the art. (*See* MPEP § 2142.) Further, “rejections on obviousness cannot be sustained with mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” (*In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).) Alleging that the invention would have been obvious “[as] a matter of design choice [because] the device would still function properly with such an arrangement” amounts to a conclusory statement and does not establish a *prima facie* case of obviousness. Indeed, to be patentable, every invention must function properly, so the proper functioning of an invention cannot render the invention obvious. As such, Applicants respectfully request that the Examiner withdraw the rejection of claim 3.

Claims 2, 3, 8, and 11 depend from independent claim 1. Applicants respectfully submit that these claims are allowable at least by virtue of their dependency from claim 1.

Regarding claims 12 and 13, the Examiner alleges that Montaner “discloses the structural limitations of the instant invention and the method of overmolding has already been discussed above.” The discussion “above” that the Examiner is referring to discusses overmolding in the context of product claims. Claims 12 and 13, however, recite a *method* of manufacturing a fluid dispenser head. Montaner does not disclose any steps for manufacturing a fluid dispenser head. In fact, Montaner indicates that “the pump comprises diffusion and operating means 2 which are not described in detail because they are conventional and such description is not required for an understanding of the invention. Said means 2 include a cap 4 . . . .” (Montaner, col. 2, lines 50-56.) Thus, Montaner does not disclose any of the method steps recited in claims 12 and 13. Applicants respectfully request that the Examiner withdraw the rejections of claims 12 and 13.

**Claim Rejections under 35 U.S.C. § 103**

The Examiner rejected claim 10 as allegedly being unpatentable over Montaner in view of Andris (U.S. Pat. No. 5,238,156). Applicants respectfully submit that claim 10 is allowable at least by virtue of its dependency from claim 1.

**New Claims**

For additional claim coverage merited by the scope of the invention, Applicant is adding new claims 15 and 16. Applicant respectfully submits that these new claims are allowable at least by virtue of their dependency from claim 1.

**Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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